

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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Attachment No. 2

INITIAL STATEMENT OF REASONS**CALIFORNIA CODE OF REGULATIONS**

TITLE 8: Division 1, Chapter 4, Subchapter 7, Article 7, Section 3328
of the General Industry Safety Orders.

Machinery and Equipment—Definition of “Equipment”.**SUMMARY**

This rulemaking was initiated as a result of the Decision after Reconsideration (DAR) issued in Occupational Safety and Health Appeals Board (OSHAB) Docket No. 99-RID3-786, regarding an appeal initiated by the Herrick Corporation. In that decision, the OSHAB relied on a dictionary definition of the word “equipment” in deciding that a temporary shoring column constituted “equipment” as that term is used at California Code of Regulations, Title 8, Section 3328. This rulemaking is undertaken so that an appropriate definition of the term “equipment” will be stated in Section 3328. With the addition of such a definition to the safety order, neither regulators nor the regulated public will have to speculate as what dictionary definition should be used in determining the meaning of “equipment,” as that term is used in the standard. More significantly, neither regulators nor the regulated public will have to speculate as to the scope of the standard’s applicability, which is determined in large part by the definition of “equipment.”

SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION

Section 3328 contains various requirements regarding the design, use, operation, inspection, installation, modification, repair and maintenance of machinery and equipment. The standard does not define “equipment,” and no such definition applicable to Section 3328 is set forth in Title 8. This proposal adds a new subsection (i) to Section 3328. That subsection proposes states a definition of “equipment” that is consistent with the definition relied on in the DAR. The proposal thereby clarifies the meaning of an important term used in Section 3328, and in doing so, the proposal clarifies the applicability of the safety order’s requirements.

DOCUMENT RELIED UPON

1. The Decision after Reconsideration, OSHAB Docket No. 99-RID3-786, dated December 18, 2001.

This document is available for review Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Standards Board Office located at 2520 Venture Oaks Way, Suite 350, Sacramento, California.

REASONABLE ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES

No reasonable alternatives were identified by the Board and no reasonable alternatives identified by the Board or otherwise brought to its attention would lessen the impact on small businesses.

SPECIFIC TECHNOLOGY OR EQUIPMENT

This proposal will not mandate the use of specific technologies or equipment.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made a determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under “Determination of Mandate.”

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed regulation does not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendment will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, this regulation does not constitute a “new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

The California Supreme Court has established that a “program” within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

The proposed regulation does not require local agencies to carry out the governmental function of providing services to the public. Rather, the regulation requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed regulation does not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

The proposed regulation does not impose unique requirements on local governments. All state, local and private employers -will be required to comply with the prescribed standard.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendment may affect small businesses. However, no economic impact is anticipated.

ASSESSMENT

The adoption of the proposed amendment to this regulation will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

ALTERNATIVES THAT WOULD AFFECT PRIVATE PERSONS

No reasonable alternatives have been identified by the Board or have otherwise been identified and brought to its attention that would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.